Court ruling is victory for open records in this state

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Back in 1972, when Washington state's voters overwhelmingly approved what is now known as the Public Records Act, computers were bulky, clunky, room-sized behemoths and telephones were devices into which people only talked. Most of the government records targeted by the act were printed on paper and stuffed in file cabinets.

A 20th century law now has passed two 21st century tests regarding practices that technology has enabled. Five years ago, the state Supreme Court ruled the Public Records Act applied to data stored on a personal computer, arguing that a government worker who tries to circumvent the act by using a home computer would drastically undermine the law. On Thursday, the state Supreme Court unanimously — and correctly — ruled that a public employee's work-related text messages on a private cellphone are public records.

The ruling came in a Pierce County case filed by a sheriff's detective who had asked for the county prosecutor's call and text records. She had sued the county, claiming the prosecutor banned her from his office after she criticized the prosecutor and supported a political opponent. The requests included texts that he made and received on his private cellphone.

The prosecutor, who acknowledged some of his texts were work-related, produced a list of dates, times and telephone numbers of calls and messages — but not the contents. In their decision, the justices overruled a trial judge who had sided with the prosecutor. The court told the prosecutor to get a transcript of his text messages and hand over to the county any that are public records so they can be sent to the detective.

The court also rejected the notion that using a private phone to create public records builds a shield of privacy that is not subject to the public's right to know under the current law. It also rejected the prosecutor's contention that the prosecutor and his office aren't the same thing.

The court did establish some limits that will thwart so-called fishing expeditions: the ruling doesn't allow a public employer to seize a worker's private cellphone to search for public records, nor does it apply to a citizen wanting to sue a public employee for private messages.

And this isn't a complete victory. Text message logs are available in the Pierce County case but may not be in future cases, thus making it more difficult to determine the topics of contested texts. A public official still has leeway in determining what is public business, so future efforts to track down text content could be costly and time-consuming.

Nonetheless, advocates of open records hailed the court's ruling. Toby Nixon, president of the Washington Coalition for Open Government and a Kirkland City Council member, told the News Tribune of Tacoma, "It's a good day. The Supreme Court unanimously affirmed that public records that are held on private devices in whatever form are still public records, subject to disclosure. For me, the key issue was text messages."

The decision also sends a clear message that local governments must adopt policies regarding the retention and disclosure of public records created on employees' private devices, and that not doing so could lead to expensive litigation. Many jurisdictions have developed such policies, but too many have been slow to recognize the issue.

The intent of the Public Records Act is stated in its preamble, which reads in part: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." The court has reaffirmed that the act applies to both paper and pixels. It's gratifying to see that principle surviving a legal test of time and technology — more than 40 years after it first came into law.

• Members of the Yakima Herald-Republic editorial board are Sharon J. Prill, Bob Crider, Frank Purdy and Karen Troianello.